

Office of Accountability and Whistleblower Protection (OAWP) Training Course



Presented in Washington, DC
September 9 – 13, 2019

2019 Training AGENDA; September 9 - 13**DAY ONE**

8:00 – 11:30 OAWP leadership to host an “all hands” different location

1:00 Program Check In

1:30 OAWP and the Whistleblower Protection Act

Overview

- Definition of a Whistleblower
- Whistleblowers with unclean hands
- What constitutes a proper disclosure?
- Public Law 115-41 VA Accountability and Whistleblower Protection Act

Prohibited Personnel Practices

- What are the Prohibited Personnel Practices?
- What are Prohibited Personnel Practices?

***There will be a 15-minute break at 2:45 p.m.**

DAY TWO

Misconduct Investigations

8:00 Why do we investigate?

- Consequences of Disciplinary Actions
- Identifying Proper Charges
- Identifying matters that fall outside of OAWP
- Common Types of Misconduct

10:00 Preparing for the Investigation

- Investigator's Role
- Planning the interview(s) (whom to interview, in what order, what type of warning should the witness receive?)
- Staging the Interview Room
- How to handle high-profile cases

11:00 Witness Rights

- Union representation
- Attorney representation
- Issues involving criminal misconduct

12:00 Lunch

1:00 Conducting the Investigation

- How to handle evidence
- Non-electronic evidence
- Electronic evidence
- Medical evidence
- Non-testimonial evidence

***There will be a 15-minute break at 10:10 a.m., and at 2:45 p.m.**

4:00 Adjourn

DAY THREE

8:30 Answers to Questions

9:00 EXERCISE: Test Your Knowledge – Whistleblower Jeopardy

10:45 Conducting the Investigation (Continued)

Cognitive Based Interviews

Establishing Rapport

Framing Questions

Difficult Witnesses

Assessing Credibility

12:00 Lunch

1:00 EXERCISE: Conducting a Cognitive Based Interview

2:00 Writing the Report

Organization

Statement of the Facts (Chronology)

Making Findings (Reaching conclusions)

Drafting Findings and Recommendations

4:00 Adjourn

***There will be a 15-minute break around 10:30 a.m., and at 2:45 p.m.**

DAY FOUR**9:00 Introduction of Auditors**

Why auditing is so important.

What should a great report contain?

Identifying gaps in the evidence

Are the findings and recommendations substantiated by the evidence?

12:00 Lunch**1:00 EXERCISE: Audit Reports**

2:45 Discuss analysis and provide one or two other reports for their review

4:00 Adjourn

***There will be a 15-minute break at 10:45 a.m., and 2:30 p.m.**

DAY FIVE**9:00 Answer Questions****9:30 Review reports and discuss auditor findings****11:00 EXERCISE – Test Your Knowledge – Auditor Jeopardy****12:00 Lunch****1:00 Final Questions and Presentation of Certificates****2:00 Adjourn**

SYLLABUS: OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION (OAWP) TRAINING

Course Description – This training will encompass comprehensive information on administrative investigations and topics that include: the importance of OAWP investigations, review of prohibited personnel practices, misconduct investigations, whistleblower retaliation investigations, and recognizing connected matters outside the scope of OAWP investigations. The training will also address how to conduct investigations and will include instruction on writing and auditing investigation reports.

Course Details: In this unique five-day course on the whistleblower protection investigation and auditing process, training will include approximately 6 hours of instruction, each day, with sessions incorporating practical exercises and interactive learning. The first 3 days will focus on administrative investigations, the remaining 2 days will focus on audit reports. Training will include sessions that encompass best practices and tips for writing and auditing investigation reports. Training sessions will be 60 to 90 minutes in length. In addition to 6-hours of instruction, there will be time allotted for two 15-minute breaks, in the morning and afternoon, respectively, and one hour for lunch. Students will receive a certificate of completion. Attendees are expected to attend every session in order to obtain certificates of completion. See attached Agenda for further details.

Objectives: At the completion of this course, you will be able to:

- **Recognize the thirteen Prohibited Personnel Practices, and understand why whistleblower disclosures are important to the Department of Veterans Affairs (VA).**
- **Distinguish between a protected disclosure and whistleblower retaliation complaint.**
- **Explain the process for investigating retaliation complaints.**
- **Recognize matters that are outside the scope of OAWP investigations.**
- **Understand evidentiary principles associated with collecting non-electronic, digital, medical, and non-testimonial evidence.**
- **Understand witness rights during the investigation process.**
- **Prepare for an investigation, set to the interview room and conduct cognitive based interviews.**
- **Understand the process for conducting cognitive-based interviews.**
- **As an investigator, you will learn best practice tips for writing an investigation report.**
- **As an auditor, you learn best practice tips for reviewing the investigation report.**

Course Location: The W Hotel - Washington, DC 515 15th St NW, Washington, DC 20004.

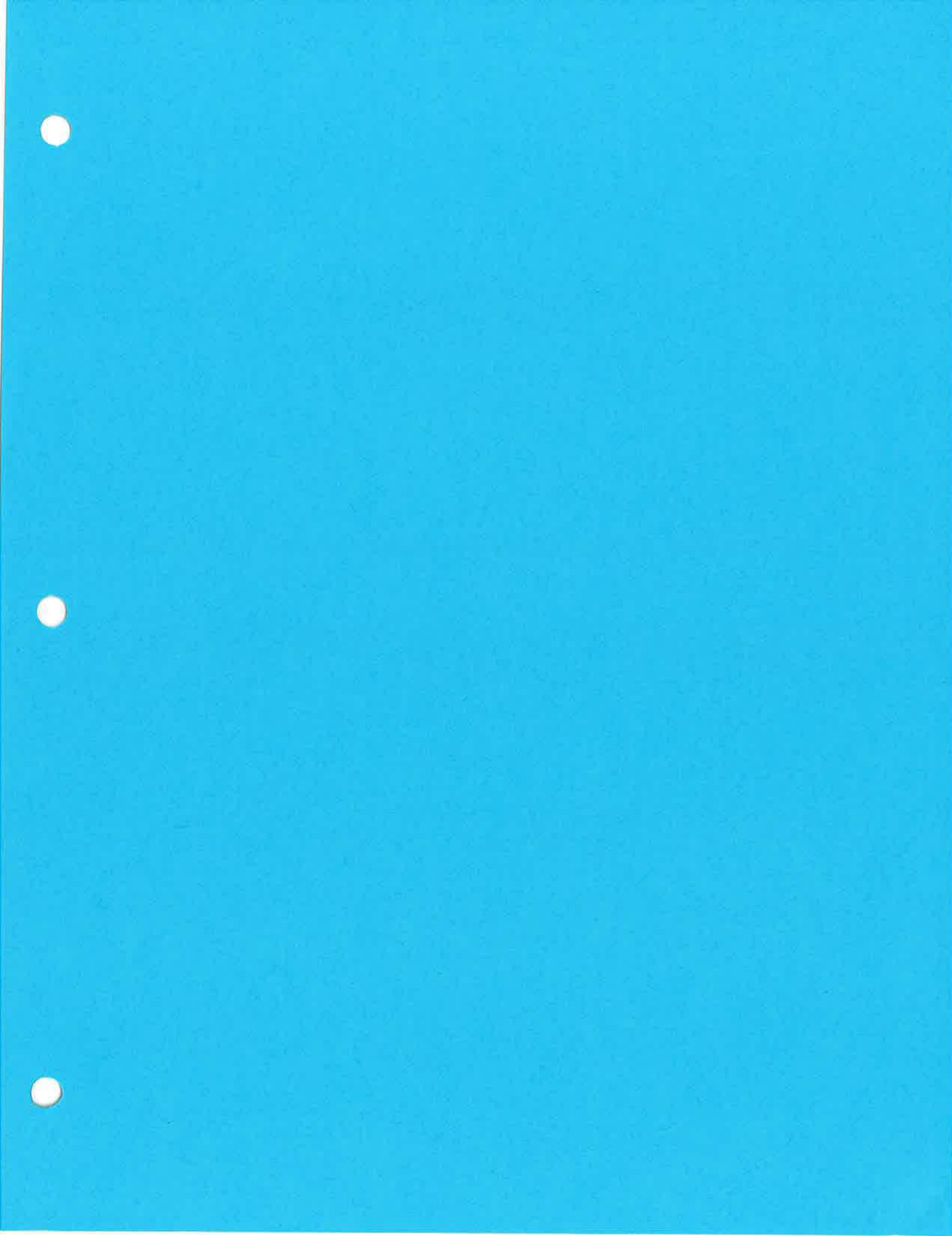


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INTRODUCTION

This document provides a synopsis of pertinent guidance applicable to investigators and auditors for the Office of Accountability and Whistleblower Protection (OAWP). The referenced material is derived in part from standards listed in periodicals created by the Council of the Inspector's General on Integrity and Efficiency. The complete CIGIE handbooks can be found at the following link: <https://www.ignet.gov/content/quality-standards>.

OAWP CHAIN OF RESPONSIBILITY

OAWP is a stand-alone office that is headed by the Assistant Secretary of Veterans Affairs for the Office of Accountability and Whistleblower Protection (ASA(VA)). The ASA(VA) OAWP plays a critical role in providing oversight for the VA Secretary's accountability priorities and final review. She provides advisory support to VA leadership in the guidance, coordination, direction, and evaluation of whistleblower protections and senior leader accountability throughout the Department.

OAWP MISSION

The Office of Accountability and Whistleblower Protection (OAWP) ensures accountability within the Department of Veterans Affairs (VA), receives and investigates VA whistleblower disclosures, and protects VA employees and applicants for VA employment from whistleblower retaliation.

OAWP's statutory functions can be found under 38 U.S.C. § 323(c) and include:

- A.** advising the Secretary of Veterans Affairs (the Secretary) on all matters relating to accountability;
- B.** issuing reports and recommendations on matters addressed in subparagraph A;
- C.** receiving whistleblower disclosures;
- D.** referring whistleblower disclosures received by OAWP for investigation, if the Assistant Secretary for Accountability and Whistleblower Protection (Assistant Secretary) has reason to believe the whistleblower disclosure is evidence of a violation of a provision of law, mismanagement, gross waste of

funds, abuse of authority, or a substantial and specific danger to public health or safety;

E. receiving and referring disclosures from the U.S. Office of Special Counsel (OSC) for investigation

F. recording, tracking, reviewing, and confirming implementation of recommendations from audits and investigations carried out by VA's Office of Inspector General (OIG), VA's Office of the Medical Inspector (OMI), OSC, and the Government Accountability Office (GAO), including the imposition of disciplinary actions and other corrective actions contained in such recommendations;

G. analyzing data from OAWP and OIG telephone hotlines, other whistleblower disclosures, disaggregated by facility and area of health care if appropriate, and relevant audits and investigations to identify trends and issue reports to the Secretary;

H. receiving, reviewing, and investigating allegations of misconduct, retaliation, or poor performance involving:

1. a VA senior executive;
2. an individual employed by VA in a confidential, policy-making, policy-determining, or policy-advocating position; or
3. a supervisory employee, if the allegation involves retaliation against a VA employee for making a whistleblower disclosure; and

I. making recommendations to the Secretary for disciplinary action as the Assistant Secretary considers appropriate after substantiating any allegation of misconduct or poor performance pursuant to an investigation carried out as described in subparagraph F or H.

OAWP'S VALUES

WE²CARE, which stands for **We** engage, **e**ducate, and **c**ollaborate to improve **a**ccountability and **r**eliability in VA for **e**veryone.

- The **W** in **WE²CARE** stands for **We**. That is, the Assistant Secretary and all OAWP staff.

- The **E2** in **WE²CARE** stands for **engage** and **educate**.

- o Engagement includes ongoing communication with whistleblowers about disclosures and investigations, investigations conducted or overseen by OAWP, and recommendations made by the Assistant Secretary for disciplinary action.

o Educate includes the training that OAWP has conducted and will continue to conduct for supervisors and employees.

- The **C** in **WE²CARE** stands for **collaborate**. **Collaboration** includes building trust in OAWP investigations and recommendation by maintaining ongoing dialogue and communication with stakeholders, including Congress and the public. Collaboration also includes liaising with GAO, OIG, OSC, and OMI on reports and recommendations and working with VA administrations and staff offices to ensure compliance with those recommendations.
- The **A** in **WE²CARE** stands by **accountability**. **Accountability** begins with self-accountability. That is, employees and managers holding themselves accountable versus OAWP or another entity within VA forcing them to be accountable.
- The **R** in **WE²CARE** stands for **reliability**, including for individuals who use VA services; who trust VA with their lives and those of their loved ones; for entities that audit a VA, including GAO and OIG; and for Congress and the public.
- The last **E** in **WE²CARE** stands for everyone, including individuals who use VA services, for caregivers and families who support those individuals, for VA employees and applicants for VA employment, and for Congress and the public.

Statement of Principles for OAWP

The Office of Accountability and Whistleblower Protection (OAWP) is committed to ensuring accountability within the Department of Veterans Affairs (VA). OAWP receives and investigates VA whistleblower disclosures and protects VA employees and applicants for VA employment from whistleblower retaliation.

Basis of Legal Authority for OAWP

OAWP was established by the President of the United States on April 27, 2017, under Executive Order 13793. OAWP was statutorily established by the VA Accountability and Whistleblower Protection Act of 2017, P.L. 115-41, and its functions are codified under 38 U.S.C. § 323.

Quality Standards for Investigators

A. GENERAL STANDARDS: General Standards apply to investigators and the organizational environment in which they perform. The three general standards address:

Qualifications – In all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude. This standard places upon agencies, investigative organizations, and investigators the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. There are three general classes of impairments to independence: personal, external, and organizational.

Independence – Individuals assigned to conduct the investigative activities must collectively possess professional proficiency for the tasks required. This standard places upon the investigative organization the responsibility for ensuring that investigations are conducted by personnel who collectively have the knowledge and skills required to perform the investigative activities.

Due professional care – Due professional care must be used in conducting investigations and in preparing related reports. This standard requires a constant effort to achieve quality and professional performance. It does not imply infallibility or absolute assurances that an investigation will reveal the truth of a matter.

B. Qualitative Standards for Investigators

Planning - Organizational and case-specific priorities must be established and objectives developed to ensure that individual case tasks are performed efficiently and effectively.

Executing Investigations – Investigations must be conducted in a timely, efficient, thorough, and objective manner.

Reporting – Reports (oral and written) must thoroughly address all relevant aspects of the investigation and be accurate, clear, complete, concise, logically organized, timely, and objective.

Managing Investigative Information – Investigative data must be stored in a manner that allows effective retrieval, reference, and analysis, while ensuring the

protection of sensitive data (i.e., personally identifiable, confidential, proprietary, or privileged information or materials.).

QUALITY STANDARDS FOR AUDITORS

Quality standards for auditors are found in GAO-18-568G, GOVERNMENT AUDITING STANDARDS: 2018 Revision issuance. It states: Given the current challenges facing governments and their programs, the oversight provided through auditing is more critical than ever. Government auditing provides the objective analysis and information needed to make the decisions necessary to help create a better future. The professional standards presented in this 2018 revision of Government Auditing Standards (known as the Yellow Book) provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and to help improve government operations and services. These standards, commonly referred to as generally accepted government auditing standards (GAGAS), provide the foundation for government auditors to lead by example in the areas of independence, transparency, accountability, and quality through the audit process. This issuance can be found at:
<https://www.gao.gov/assets/700/693136.pdf>.

The Whistleblower Protection Act: An Overview

Whistleblowing, What is it All About?

A **whistleblower** is a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct within an organization that is either private or public. The **Whistleblower** Protection Act was made into federal law in the **United States** in 1989.



Session Agenda

Whistleblowing, What is it All About?

1773

Confidential letters exposed by Benjamin Franklin proved the governor of Massachusetts misled Parliament to promote a military buildup in the new world. The governor was dishonorably discharged and exiled.

1777

US naval officers Samuel Shaw and Richard Marven revealed the torture of British POWs by the commander-in-chief of the Continental Navy. The following year, the Continental Congress unanimously enacted the first whistleblower protection law.

1968

A. Ernest Fitzgerald, a Department of Defense auditor, reports a \$2.3 billion cost overrun in the Lockheed C-5 aircraft program. President Nixon reportedly tells aides to fire Fitzgerald, but he's reinstated four years later. In the late 1980s, Fitzgerald plays a part in the investigation that reveals the Pentagon has purchased \$200 hammers and \$900 toilet seats.

Whistleblowing, What is it All About?

2004

Food and Drug Administration (F.D.A.) safety officer David Graham breaks ranks with his employer and testifies to the U.S. Senate that Merck's blockbuster arthritis drug Vioxx has killed as many Americans as the Vietnam War. Merck is forced to withdraw Vioxx from the market, and the F.D.A.'s reputation is severely tarnished.

2003

Jon Oberg, while working at the Department of Education as a researcher, discovered illegal payments to student loan lenders of federal tax dollars that department officials instructed him not to investigate. On his own time, he researched the payments and reported them to Congress, which in 2004 ended the payments prospectively, saving billions of dollars. In 2007, Oberg sued the recipients under the False Claims Act. Three years later, the Department of Justice announced it had settled four of the cases for over \$57 million.

2007

Kit Foshee blew the whistle on the ammoniation process used by his former employer Beef Products Inc. (BPI) on its low-grade beef product later known as "pink slime."

Whistleblowing, What is it All About?

Republic of South Africa

Republic of Korea

China

Canada

United Kingdom

France

Japan

Australia

Brazil

Indonesia

Countries that have some version of whistleblower laws and protections

Whistleblowing, What is it All About?

The Federal Government enforces protections for employees who suffer retaliation for engaging in protected activities under more than 20 federal laws.

The **Whistleblower Protection Act of 1989**, 5 U.S.C. 2302(b)(8)-(9), Pub.L. 101-12 as amended, is a United States federal law that protects federal whistleblowers who work for the government and report the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to public health and safety.

A federal agency violates the Whistleblower Protection Act if agency authorities take (or threaten to take) retaliatory personnel action against any employee or applicant because of disclosure of information by that employee or applicant.

Overview

The Department of Veterans Affairs Accountability and Whistleblower Protection Act (VAAWPA) of 2017.

- 115 P.L. 41, signed by President Trump on June 23, 2017.
- Created new authorities to hold employees accountable for misconduct and poor performance, and modified timelines for disciplinary process.
- Authorities apply to Senior Executives, Title 5, and some Title 38 employees.
- Created Office of Accountability and Whistleblower Protection within VA.
- Instituted measures to protect whistleblowers at the VA.
 - Requirement to include protection of whistleblowers in evaluation of supervisors.
 - Requirement to conduct training regarding whistleblower disclosures.
 - Redesignated an existing statute that requires certain discipline for those found to have retaliated against whistleblowers.
- Miscellaneous provisions
 - Recoupment of bonuses, relocation expenses.
 - Direct hire authority for MCDs
 - Reporting

Whistleblowing, What is it All About?

Definitions:

A federal agency violates the Whistleblower Protection Act if agency authorities take (or threaten to take) retaliatory personnel action against any employee or applicant because of disclosure of information by that employee or applicant.

A whistleblower is someone who makes a “protected disclosure;” or engages in a “protected activity”

That’s it. It does not require any manner of formal process or third party designation.

—The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government

Whistleblowing, What is it All About?

What is a “**protected disclosure**”?

An employee is a whistleblower if he or she reports or makes a complaint about:

1. a violation of law, rule, or regulation;
2. gross mismanagement;
3. gross waste of funds;
4. an abuse of authority;
5. a substantial and specific danger to public health or safety; or
6. censorship related to research, analysis, or technical information.

Whistleblower Basics – Protected Disclosures

KNOWLEDGE CHECK

John Employee is sick and tired of his office mate arriving 20-30 minutes late for every shift. John complains to his supervisor.

Has he made a protected disclosure?

Is he a whistleblower?

What if John complains to the Office of Inspector General that his supervisor allows employees to arrive 20-30 minutes late for every shift without taking leave?

Has he made a protected disclosure?

Is he a whistleblower?

Whistleblower Basics- Protected Disclosures

- Disclosures can be made to:
 - Member of Congress
 - Office of the Special Counsel (OSC)
 - Office of Inspector General (OIG)
 - The Secretary of VA
 - Any management official
 - White House
 - Government Accountability Office (GAO)
 - The media (e.g., Washington Post)
 - Office of Accountability and Whistleblower Protection (OAWP)
 - You!



Whistleblower Basics- Protected Disclosures

As long as the whistleblower reasonably believes that it is true, it is protected.

Reasonable belief: the Director is taking the facility GOV home and using it over the weekend.

But in reality: Director just bought a used GSA fleet car that looks exactly the same as the facility GOV.



Whistleblower Basics- Protected Disclosures

- ❑ It doesn't matter if what employee reports or complains about:
 - Was already disclosed to you or someone else
 - Was disclosed while off duty
 - Was disclosed because it was required by the normal duties of the employees job
 - Was disclosed to the person who participated in the wrongdoing
 - The whistleblower's personal motivation for making the complaint does not matter
- The employee is still a whistleblower!

***Believe It
or Not!***

Whistleblower Basics- Protected Disclosures

- Employees are not required to report problems or make complaints through the “chain of command.”
- If you hear yourself saying the words **chain of command**, you’re in whistleblower retaliation territory!



Whistleblower Basics- Protected Activities



An employee may also be a whistleblower if he or she:

Files a grievance, appeal or other complaint, i.e. union grievances and EEO complaints.

Testifies, or otherwise helps someone else file a grievance, appeal or other complaint

Cooperates with or makes a complaint to OSC or OIG

Refuses to obey an illegal order that would violate a law, rule, or regulation.

Whistleblower Basics- Protected Activities

- A protected disclosure does not include communications concerning policy decisions that lawfully exercise discretionary authority, unless the employee or job applicant making the disclosure reasonably believes that the disclosure evidences—
 - a violation of any law, rule, or regulation; or
 - gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Which of the following is an exercise of discretionary authority and therefore not a protected disclosure?

- a. Engineering Chief authorizes overtime to complete a special project.
- b. Regional Director decides to open the benefits office on Sundays.
- c. VISN approves the construction of a new clinic.
- d. These are all exercises of discretionary authority. However, disclosures about this acts may be protected.

Whistleblower Basics-

Laws that limit protected disclosures

- A disclosure is not protected if specifically prohibited by law (limited to statute only); or is required to be kept secret by Executive order in the interest of national defense or the conduct of foreign affairs.

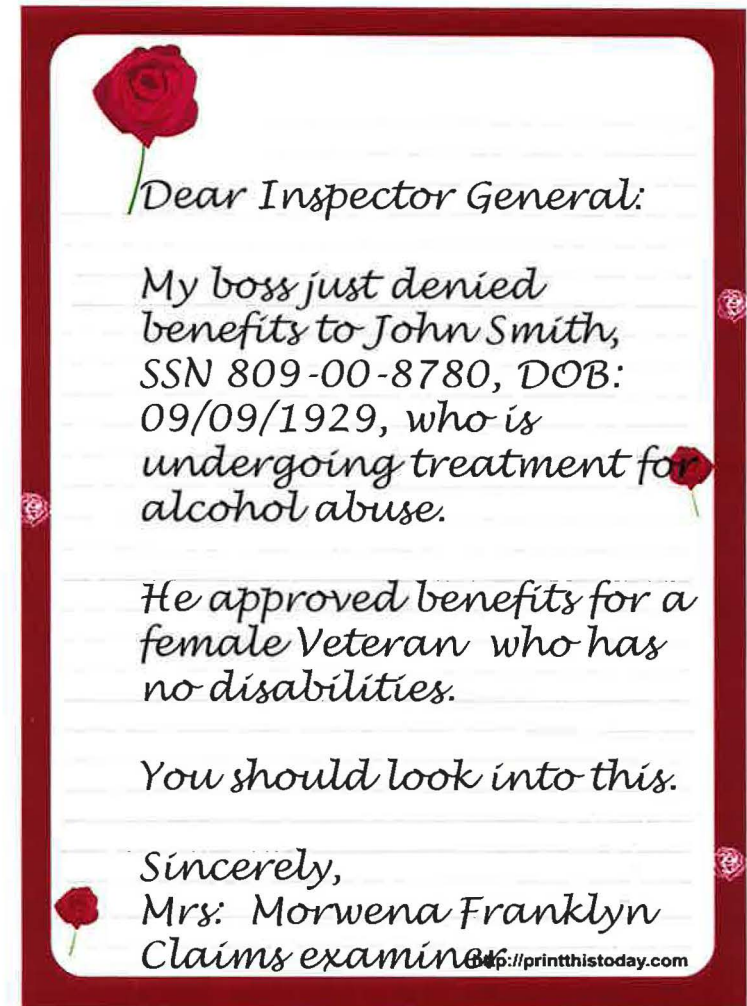
See 5 U.S.C. §2302(b)(8); DHS v. MacLean, 135 S. Ct. 913, 920-21 (2015).

- Laws that specifically prohibit disclosures, absent an exemption, include:
 - The Health Insurance Portability Act of 1996 (HIPAA)
 - The Privacy Act, 5 U.S.C. § 552a
 - 38 U.S.C. § 5701 (protecting Veteran claims information, including medical records)
 - 38 U.S.C. § 5705 (protecting medical quality assurance records)
 - 38 U.S.C. § 7332 (protecting Veteran medical records relating to the diagnosis or treatment of drug and alcohol abuse, HIV, and sickle cell anemia)

Whistleblower Basics-

Protected disclosures and OIG

- Notwithstanding the previous laws, a VA employee can disclose and legally provide confidential patient health information (PHI) to OIG.
- See 5 U.S.C. app., § §6(a)(1)-(a)(2).
- 1. Has Mrs. Franklyn made a protected disclosure?
- 2. Is Mrs. Franklyn a whistleblower?
- 3. Has she violated any law or regulation?
- 4. Can you divulge this reported information to anyone?



Whistleblower Basics- Protected disclosures and HIPAA

■ HIPAA has a whistleblower exception that allows employees to disclose PHI, if they:

1. Believe in good faith that VA has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by VA potentially endangers one or more patients, workers, or the public;

AND

2. Make the disclosure to a:
 - a. health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions;
 - b. a health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct (e.g., The Joint Commission); or
 - c. an attorney representing the whistleblower regarding the disclosure or an action that was based on the disclosure.

See 45 C.F.R. §164.502(j)(1).

Whistleblower Basics- Protected disclosures and the Privacy Act

- The Privacy Act prohibits the disclosure of information from a system of records absent written consent of the subject individual unless the disclosure falls within one of 12 statutory exemptions.
- Disclosures of information to either House of Congress or to any congressional committee with jurisdiction over the matters disclosed is permitted under the Privacy Act. *See* 5 U.S.C. § 552a(b)(9).
- The Privacy Act excludes information not from a system of records, where an employee has first-hand knowledge of that information (i.e., the employee created the information and used it compared to retrieving it from the system of records). *See Bartel v. FAA*, 725 F.2d 1403, 1411 (D.C. Cir. 1984).

Whistleblower Basics- Protected disclosures

Define Protection in regard to the terminology “protected disclosures.”

Protection from what?

Whistleblower Basics- Protected disclosures

The whistleblower with unclean hands

Your whistleblower has committed misconduct, has performed poorly and is about to get fired, has obtained the information illegally.

Does it matter?

Whistleblower Basics—Protected disclosures

The whistleblower with unclean hands

Participating in the conduct that one wishes to report to the U.S. Government, can expose oneself personally to criminal or civil liability.

However, some statutes do allow you to receive a monetary reward even if you were involved in the criminal enterprise.

Whistleblower Basics- Protected disclosures

The whistleblower with unclean hands

Participating in the conduct that one wishes to report to the U.S. Government, can expose oneself personally to criminal or civil liability.

Some statutes allow you to receive

Whistleblower Basics- Protected disclosures

The whistleblower with unclean hands



When a whistleblower who has committed criminal misconduct approaches the federal government, the government will face a policy dilemma. On one hand, it wants to prosecute the wrongdoers who have broken the law and drained resources from the treasury. It doesn't want to encourage an individual to break the law knowing that the U.S. will later pay them for reporting it. On the other hand, the U.S. needs to encourage individuals with evidence of fraud to come forward. In many cases, a morally conflicted wrongdoer has the best evidence of the misconduct. If the U.S. prosecutes them, it would have a chilling effect on other potential whistleblowers.

Only a few agencies are authorized to pay whistleblowers who have committed criminal violations involving the acts at the center of the disclosure.

In most cases, a criminal conviction bars recovery of a whistleblower reward while a role in "planning and initiating" reduces the percentage of recovery that will be awarded.

Whistleblower Basics- Protected disclosures

The whistleblower with unclean hands

Participating in the conduct that one wishes to report to the U.S. Government, can expose oneself personally to criminal or civil liability. administrative

Some statutes allow you to receive

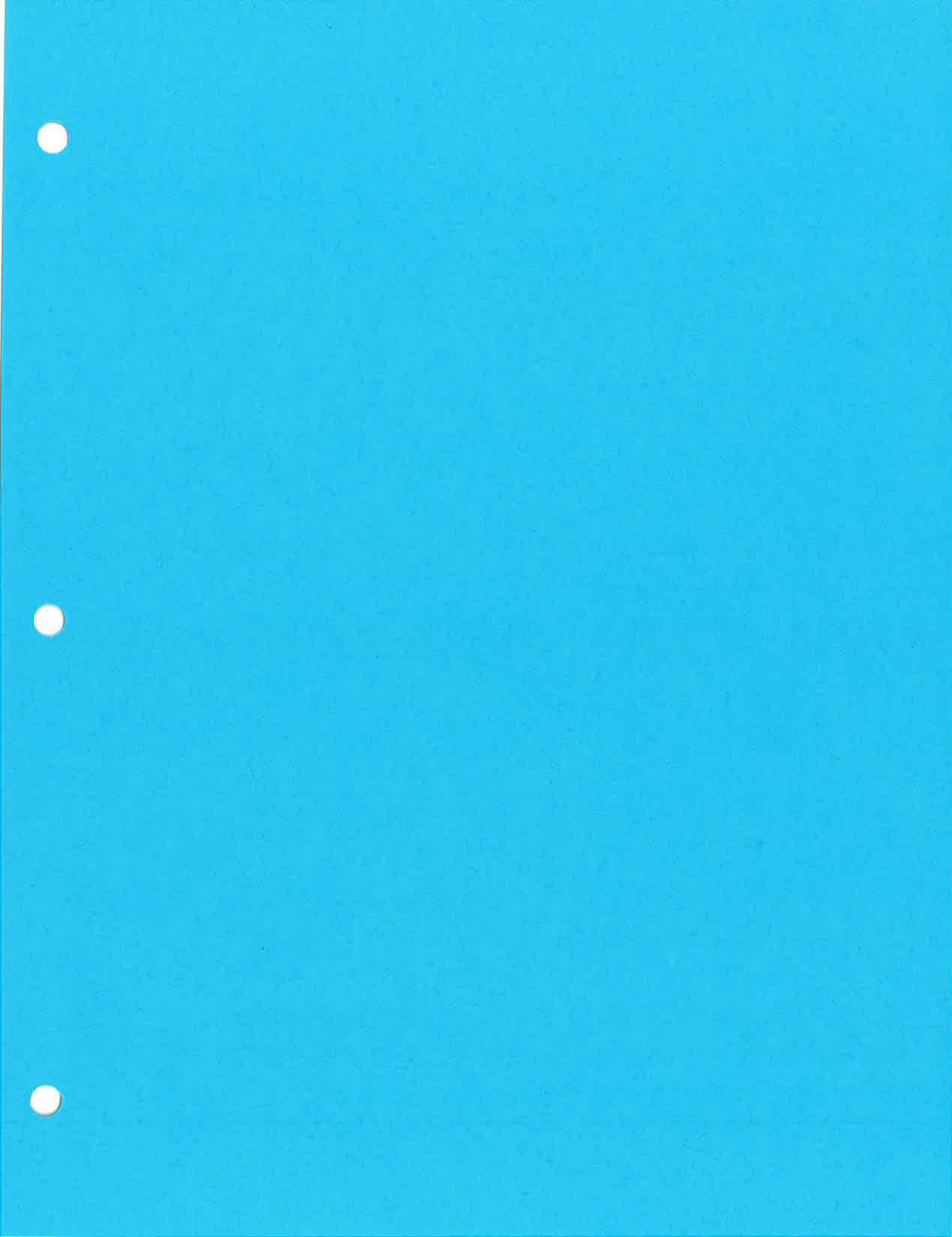
TAKE AWAY POINTS:

1. Strong whistleblower laws are necessary to protect the health, welfare and safety of the public.
2. Nuances pertain to what is or can be protected and you must familiarize yourself with those nuances.
3. Unclean hands don't negate the fact that a person may be a whistleblower. Doesn't change status, may change how person is handled.



Questions?





VA Office of Accountability and Whistleblower Protection

Office of Accountability and Whistleblower Protection

Established: By E.O. 13793 of Apr 27, 2017

Purpose: The executive order was intended to improve accountability and whistleblower protection at the Department of Veterans Affairs (VA) by receiving and investigating VA whistleblower disclosures and protecting employees from whistleblower retaliation.

Applicability: All VA employees and applicants for employment with the VA but directly investigates disclosures involving certain categories of employees.

VA Accountability and Whistleblower Protection Act

- ▶ Signed into law by President Trump on June 23, 2017

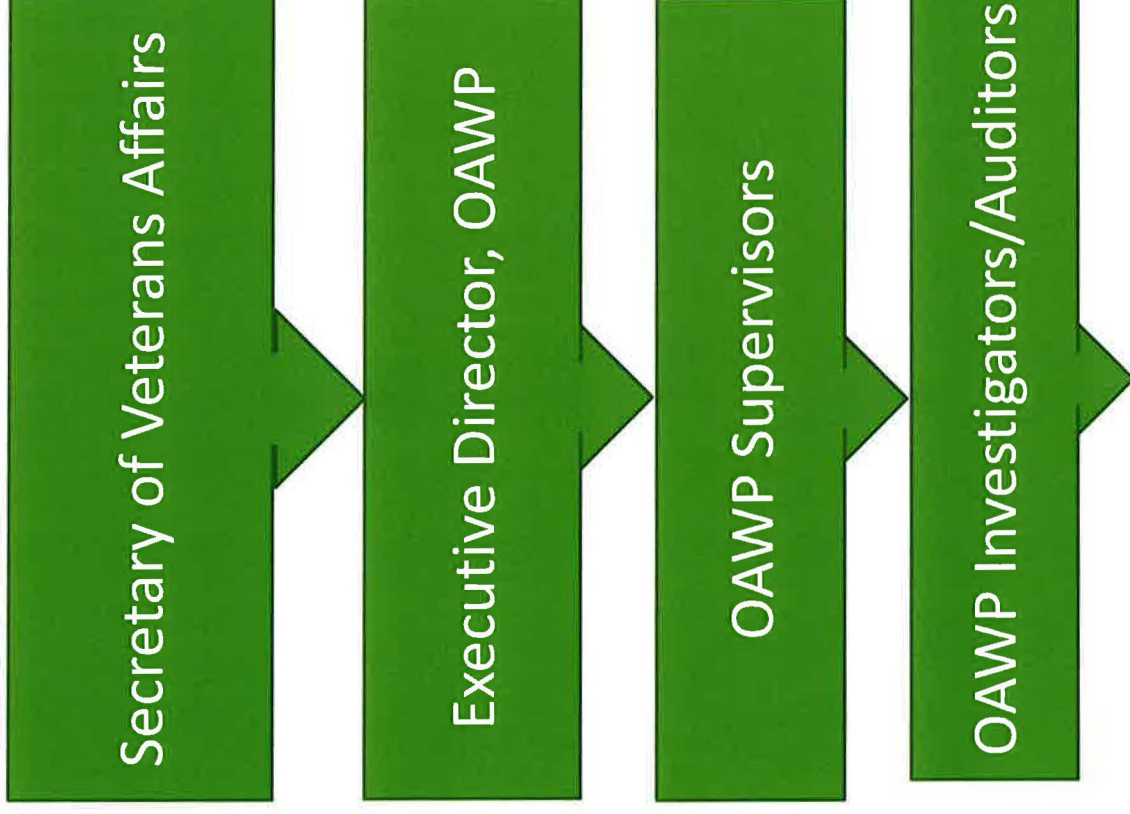
- ▶ Three main provisions
 1. Created Office of Accountability and Whistleblower Protection (OAWP)
 2. Gave Secretary more latitude and increased expediency in dealing with misconduct and poor performance
 3. Enhanced protections for whistleblowers

Office of Accountability and Whistleblower Protection

Statutory Functions:

- (i)** advise and assist the Secretary in using, as appropriate, all available authorities to discipline or terminate any VA manager or employee who has violated the public's trust and failed to carry out his or her duties on behalf of veterans, and to recruit, reward, and retain high-performing employees;
- (iii)** work closely with relevant VA components to ensure swift and effective resolution of veterans' complaints of wrongdoing at the VA; and
- (iv)** work closely with relevant VA components to ensure adequate investigation and correction of wrongdoing throughout the VA, and to protect employees who lawfully disclose wrongdoing from retaliation.

Office of Accountability and Whistleblower Protection



Office of Accountability and Whistleblower Protection

OAWP MISSION:

The Office of Accountability and Whistleblower Protection (OAWP) **ensures accountability** within the Department of Veterans Affairs (VA), receives and investigates VA whistleblower disclosures, and **protects** VA employees and applicants for VA employment from whistleblower retaliation.

OAWP'S VALUES

WE²CARE, which stands for **We** engage, **educate**, and **collaborate** to improve **accountability** and **reliability** in VA for **everyone**.

- The **W** in **WE²CARE** stands for **We**. That is, the Assistant Secretary and all OAWP staff.
- The **E2** in **WE²CARE** stands for **engage** and **educate**.
 - Engagement includes ongoing communication with whistleblowers about disclosures and investigations, investigations conducted or overseen by OAWP, and recommendations made by the Assistant Secretary for disciplinary action.
 - Educate includes the training that OAWP has conducted and will continue to conduct for supervisors and employees.
- The **C** in **WE²CARE** stands for **collaborate**. **Collaboration** includes building trust in OAWP investigations and recommendation by maintaining ongoing dialogue and communication with stakeholders, including Congress and the public. Collaboration also includes liaising with GAO, OIG, OSC, and OMI on reports and recommendations and working with VA administrations and staff offices to ensure compliance with those recommendations.
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- The **R** in **WE²CARE** stands for **reliability**, including for individuals who use VA services; who trust VA with their lives and those of their loved ones; for entities that audit a VA, including GAO and OIG; and for Congress and the public.
- The last **E** in **WE²CARE** stands for everyone, including individuals who use VA services, for caregivers and families who support those individuals, for VA employees and applicants for VA employment, and for Congress and the public.

OAWP – Integrity, Character and Ethics

Character—Each investigator must possess and maintain the highest standards of conduct and ethics, including unimpeachable honesty and integrity. Every citizen is entitled to have confidence in the integrity of Government employees, particularly investigators who routinely access sensitive information. . . .

Impartiality

Independence

Integrated Ethics

Honesty

“I had taken a course in Ethics. I read a thick textbook, heard the class discussions and came out of it saying I hadn't learned a thing I didn't know before about morals and what is right or wrong in human conduct.”

Carl Sandburg

Article from Government Executive shows why important

“The whistleblower protection office’s formation was mostly celebrated, with advocates hopeful that the focus on the rights and protections for whistleblowers would reverse a culture infamous for intimidation and reprisal. That optimism has largely soured, however, leading to hotline tips to the inspector general and bipartisan scrutiny from Congress.”

“Employees and advocates proposed several improvements for the office, including hastening its communication with whistleblowers and ensuring independence between its investigations and supervisors potentially at fault.”

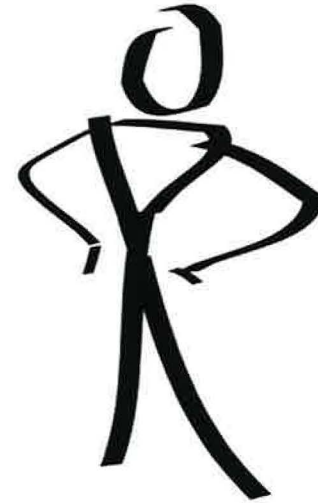
Complaints focused on:

- Independence between investigators and supervisors who were supposedly at fault.
- More efficient use of resources
- More resources to carry out the OAWP mission
- Timeliness in conducting investigations

BOTTOM LINE: YOU ARE OAWP. Your actions can help make a difference.

BOTTOM LINE: YOU ARE OAWP.

Your actions can help make a difference.



“One person can make a difference, and everyone should try.”

— John F. Kennedy

Ethical Dilemma exercise

Ethical Dilemma Training exercise – Use your cell phones to search for real world situations that demanded ethical decision making. Once you have found a situation, analyze it as follows:

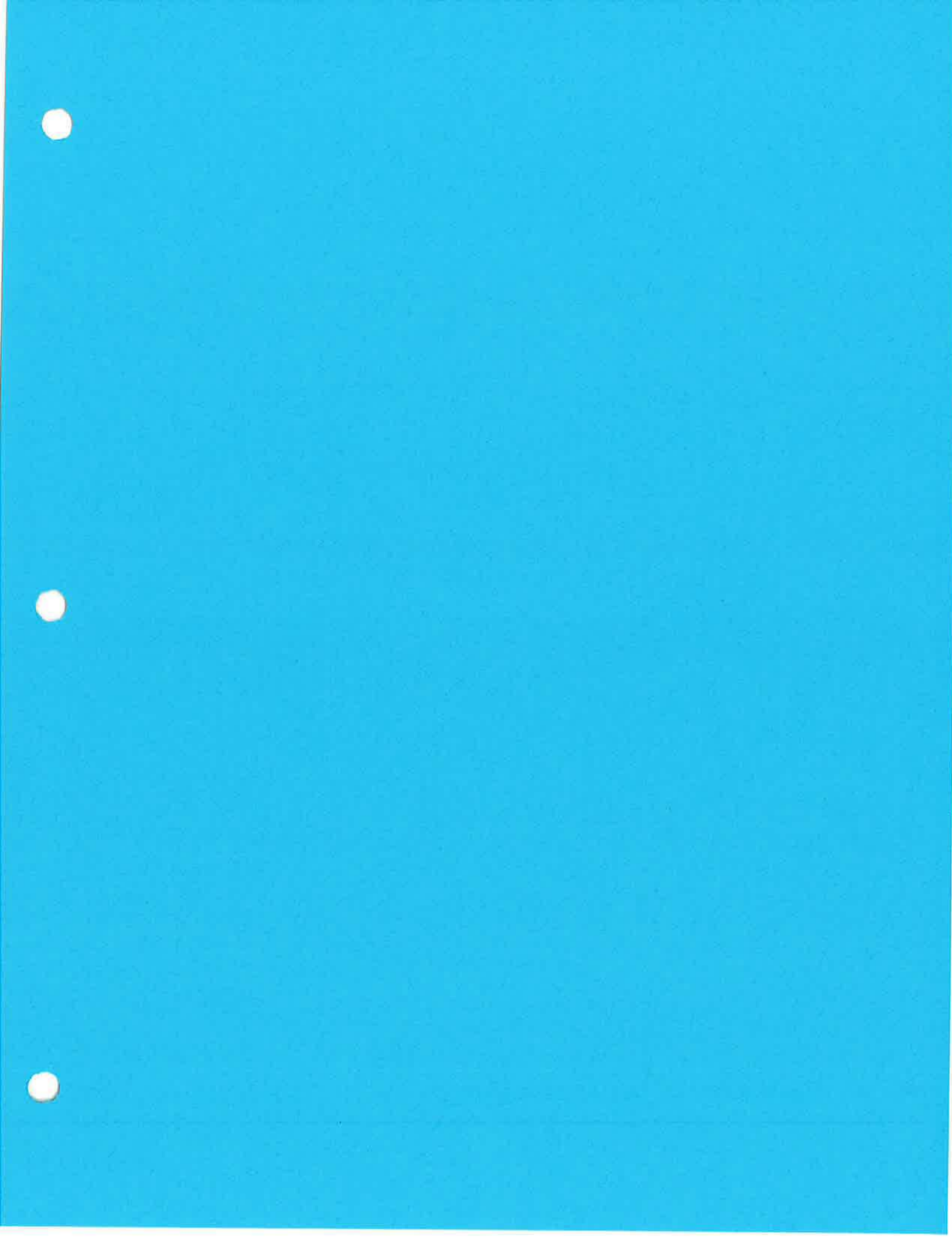
- Find a dilemma that pertains to federal government.
- Determine what was the actual dilemma.
- What were the possible choices?
- What was the actual choice taken?
- What would be the best course of action?
- Select a spokesperson to share your findings with the whole group.

TAKE AWAY POINTS:

- 1. You are the Guardians and Ambassadors of the Agency Whistleblower Process**
- 2. Understand to whom you can or should divulge information**
- 3. One person can make a difference**

QUESTIONS?





The Whistleblower Protection Act: Investigations

Agenda

Why We Investigate

Where to Begin

Handling Evidence

Interviewing Witnesses

Writing the Report

Why do we investigate?

To protect the integrity of the process, to ensure there are no abuses when it comes to exposing potential misconduct by senior officials and supervisors, and to eliminate the perception or even the appearance of a chilling effect that would discourage employees from reporting their concerns.

Why do we investigate?

To evaluate whether supervisors are responding constructively when employees of the Department report concerns, taking responsible action to resolve such concerns, and fostering an environment in which employees of the Department feel comfortable reporting concerns to their supervisors or other appropriate authorities.

Why do we investigate?

Whistleblower disclosures help to expose fraud, waste, abuse, mismanagement and threats to public health and safety. These disclosures can help save our nation billions of dollars and even prevent loss of life.

Where to begin?

You just received information about a complaint. IAW 38 U.S.C. 323, the OAWP functions to:

Receive and refer whistleblower disclosures. (c)(1)(C) and (D).

Receive, review, investigate allegations of retaliation by supervisory employee for senior leaders. (c)(1)(H)(iii).

Receive, review, investigate allegations of misconduct, retaliation, and poor performance of senior executives. (c)(1)(H)(i) and (ii).

Is it a hybrid, which contains misconduct that should be forwarded to another agency?

Where to begin?

Go back to what you just learned:

Whistleblower Disclosure – any disclosure of information by an employee of the VA or applicant for VA employment, which employee ***reasonably believes*** is evidence of :

Violation of law, rule, or regulation;

Gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety.

Were criminal allegations alleged?

Refer to OMI, OIG, other investigative entity (i.e. administrations/program offices). See 38 U.S.C 323 (c)(1)(D).

Where to Begin?

In addition to possible protected disclosures, look for allegations of retaliation by supervisory employee for senior leaders. (c)(1)(H)(iii).

Look for allegations of misconduct, retaliation, and poor performance of senior executives. (c)(1)(H)(i) and (ii).

Where to Begin?

Is the person(s) about whom the complaint is made an employee in, or applicant for a **covered position within the VA?**

Covered Position:

- any position in the competitive service;
- a career appointee in the SES; or
- a position in the excepted service; EXCEPT
- any position excepted from the competitive service (prior to personnel action) because of its confidential, policy-determining, policy-making, or policy-advocating character; or
- any position excluded from coverage by the President (prior to personnel action) based on determination that it is necessary and warranted by conditions of good administration.

Where to Begin?

If the covered employee *has authority* to take, direct others to take, recommend, or approve any *personnel action* and

Takes, fails to take, threatens to take or fail to take, *a personnel action* because the employee made a *whistleblower disclosure*.

Takes, fails to take, threatens to take or fail to take, *a personnel action* because: the employee exercised an appeal, complaint, or grievance right granted by any law, rule, or regulation, *with regard to remedying whistleblower retaliation (or other than with regard to remedying whistleblower retaliation)*;

Where to Begin?

testifying or otherwise lawfully assisting any individual in exercising such a right;

cooperating with or disclosing information to OIG (or other component responsible for internal investigation or review), or OSC, in accordance w/ applicable provisions of law; or

refusing to obey an order that would require the individual to violate a law, rule, or regulation.

If this is the case, you are looking at...

Whistleblower Retaliation

Elements

- (1) Employee or VA applicant made a *protected* disclosure or engaged in protected activity;
- (2) A supervisor/senior leader *with authority*:
 - (a) took, failed to take, threatened to take or fail to take;
 - (b) a personnel action;
- (3) The protected disclosure or protected activity was a contributing factor in the personnel action; and
- (4) The supervisor/senior leader cannot establish by clear and convincing evidence that he/she would have taken the personnel action in the absence of the protected disclosure/activity.

Whistleblower Retaliation

Examples of Personnel Actions:

- an appointment;
- a promotion;
- a disciplinary or corrective action;
- a detail, transfer, or reassignment;
- a reinstatement;
- a restoration;
- a reemployment
- a performance evaluation;

.

Whistleblower Retaliation

Examples of Personnel Actions (Cont.)

a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation or other action described herein;

a decision to order psychiatric testing or examination;
the implementation or enforcement of a nondisclosure policy, form, or agreement; and

any other significant change in duties, responsibilities, or working conditions

Misconduct and Poor Performance

Misconduct:

e.g. Violation of policy, regulation; Engaging in improper, unsuitable conduct; Actions taken by an employee that impedes agency service or mission; or Negligent performance of duty.

38 U.S.C. 713 – “...*if the Secretary determines that the misconduct...warrants such action.*”

Misconduct and Poor Performance

Elements

Misconduct: Lack of Candor

(1) Statement(s) less than candid, truthful, accurate, or complete, involving deception; and

(2) Knowingly made or withheld (i.e. knowledge of inaccuracy).

Note: If employee is not aware of the inaccuracy of the statement, there is no element of deception. Does not require intent as separate element, but does require element of deception. Broader and more flexible concept.

Misconduct and Poor Performance

Poor Performance:

- Less than Fully Successful performance rating; or significant performance deficiency.
- Difference between misconduct and performance not as significant under 38 U.S.C. 713.
- Interplay between OPM regulations and 38 U.S.C. 713.
 - Part 359, Subpart E of title 5, CFR (and VA Policy, Handbook 5027).
 - 38 U.S.C. 713 – “...*if the Secretary determines that the...performance...warrants such action.*”

Misconduct and Poor Performance

Performance: Negligent Performance of Duty

- (1) Failure to exercise the degree of care;
- (2) That a person of ordinary prudence with the same experience would exercise in the same situation.

Note: If charging for the actions of a subordinate, it requires a showing that the individual knew, or should have known, of the subordinate's misconduct or failures and acquiesced to the improper behavior. Relevant factors include:

- Actual or constructive knowledge
- Existence of relevant policies;
- Extent of direction or acquiescence;
- Experience, length of service, number of subordinates

TAKE AWAY

Know what's in your lane. Being knowledgeable about the types of cases that fall within OAWP's scope of authority, will allow you to spend quality time investigating the allegations efficiently.

Questions?



Investigation

Fact-finding vs. Investigation

Fact-finding – more informal.

Purpose

- Obtain facts.
- Analyze the facts and draw conclusions.
- Conducted for the purpose of allowing an official to choose a course of action.
- In some cases, e.g. misconduct performance, make recommendations.

Investigation

Just the Facts!

Keep an open mind

Remain objective

Watch out for personal biases

Consider theories other than your own inclinations

Ensure conclusions are supported by Findings of Fact (Critical)

Investigation

Just the Facts!

Avoid being predisposed to a theory

Avoid forcing a theory onto the facts

Avoid throwing out evidence if it doesn't fit your theory (If it doesn't fit...)



Investigation

Scope – What are the allegations? Clarify confusing or vague terms. Be familiar throughout investigation.

Identify elements, sub-issues and/or questions to be answered in the course of the investigation.

Sources of information – identify sources of information (i.e. policies, e-mails, and witnesses that may have the information).

Subject Matter - Assess your knowledge of the subject matter.

Review any applicable collective bargaining agreements (CBAs).

- Witness rights

- Agency Obligations

Investigation

Things To Consider as You Proceed

Consider possible cultural or diversity issues.

Identify potential conflicts of interest.

- Does investigator/OAWP official have personal interest in outcome?

- Does investigator/OAWP official have personal involvement in the matter to be investigated?

- Does investigator/OAWP official have personal relationship with subject/target of investigation?

Schedule or sequence of investigation.

- Information Requests and interviews.

- Incorporate time into your plan for the unexpected.

- Plan to re-interview witnesses if necessary.

- Plan process for witnesses to review their testimony up front.

Investigation

Sequence of Investigation

Receipt of allegations.

Charge Letter for investigation.

Planning the investigation.

Collect pertinent documents associated with the allegations.

Interview witnesses.



Investigation

Sequence of Investigation

Seek additional written information/interview additional witnesses based on existing evidence.

Analyze evidence.

Draft report.



Evidence



Evidence

Fact: A thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence. A physical object or appearance as it actually existed. (Black's Law Dictionary)

Evidence: Evidence is an available body or facts or information indicating whether a belief or proposition is true or valid. It is the information upon which you rely when making a finding of fact.

It is used to prove or disprove the existence of an alleged fact.

Evidence is not assumptions, speculation, conclusions, proof, or anything so incredible that it is not worthy of belief.

Without evidence, you cannot establish a fact nor draw a conclusion.



Evidence

Categories of Evidence

Direct - based on person knowledge or observation, and that, if true, proves a fact without inference or presumption.

Circumstantial - Evidence based on inference and not on personal knowledge or observation.

Evidence

Four types of Evidence:

Documentary - evidence supplied by something in writing or a document.

Testimonial - evidence/testimony elicited from a witness.

Demonstrative - offered to clarify events.

Tangible - things.

Evidence

Documentary evidence may include:

- Time and attendance records, leave requests;
- Documents from personnel or credentialing and privileging folders;
- Agency regulations or policies;
- Reports of contact;
- Supervisory notes or memos;
- Emails, text messages, and other correspondence;
- Medical reports; or
- Position Descriptions, performance appraisals.

Best when identified and authenticated by witness testimony to establish accuracy

Evidence

Testimonial evidence is a statement from a witness about what s/he did, saw or heard:

“I administered the medication at 10:05 a.m.”

“I saw her administer the medication before she went to lunch.”

“Nurse Randall told me she had forgotten to give the patient his 10:00 am medication.”

Evidence

Demonstrative evidence serves as a representation to prove or disprove a fact, and include:

- Photos

- Drawings

- Charts/Diagrams

- Maps

- Demonstrations or reenactments

Physical evidence that one can see and inspect and that, while of probative value and usually offered to clarify testimony, does not play a direct part in the incident in question.

Demonstrative evidence must be identified and *authenticated* to establish its accuracy.

Evidence

Tangible evidence is real or physical evidence that you can touch or examine, such as:

- Torn or bloody clothing
- Container full of an illegal substance in a worksite locker
- Government-owned property in an employee's car
- Computer hard-drive
- Syringe or other medical device

Requires a chain of custody- verification of every place the evidence has traveled after the Agency takes possession, to ensure it has not been tainted.

Evidence

Presumptions and Inferences: logical leaps between one set of proven facts and another

Employee found with government-owned property on the passenger seat in his car can be presumed to be the same employee who removed it (or authorized its removal) from the worksite

Admissions: statements, actions, or omissions that are inconsistent with a witness' interest

Subject's statement that he requested and was granted leave in the past serves as an admission that he knew and understood proper leave-requesting procedures

Evidence

Best Evidence

Evidence of the highest quality available - that which is more specific and definite as opposed to that which is merely general and indefinite.

Example: The medical records themselves are better evidence than testimony regarding what is in the medical records.

Caution: Use caution when considering opinions, testimony regarding character, hearsay.

Evidence

What makes evidence “Best Evidence?”

Eye Witness Evidence: one who personally observes an event, is better evidence than hearsay.

Personal Knowledge Evidence: knowledge gained through first hand observation or experience, is better evidence than a belief based on what someone else said.

Corroborating Evidence: More than one witness or document that says the same thing, improves the strength of the evidence when established from multiple sources.



Evidence

Do's and Don'ts

Do protect and secure evidence.

Do verify the authenticity of evidence.

Do assess witness credibility and competence when necessary.

Do examine all evidence before drawing conclusions.

Do look for consistencies and discrepancies.

Do evaluate relative strength (probative value) of evidence.

Don't stretch evidence beyond what it actually proves.

Don't substitute opinion, assumption, or supposition for proven facts.

Don't be afraid to use evidence in small bits to build a bigger picture.

Witness Interviews

Identify potential witness:

Collect names from the documents that you received or obtained.

Determine, based on the situation, who or what types of employees were likely present to witness the event.

Collect additional names as you listen to testimony. (Ask who else was present, who else should we talk to?)

Determine witness order.

Prepare for the Interview-

Determine what questions need answers (remember the elements of any charge or allegation you are investigating).

Determine who can help answer those questions.

Draft questions for each interview- avoid questions that are statements.

Assign roles to investigators (i.e. ask questions, take notes, assess credibility).

Witness Interviews

Schedule Interviews in this Order

Those present.

Those probably present, may have seen the event.

Those who have knowledge of actual practices.

Those who have knowledge of policies.

Subject or target of the investigation.

Witness Interviews

Recording Testimony:

- Court reporter- best option

- Tape recorder- risky

- Obtain written affidavits

- Scribe to create summaries of testimony in the simplest of cases

Logistics/Opening the interview

- Room set up- positioned so that you can observe the witness

- Bring in the witness

- Pre-interview

- Swearing-in

- Note-taking- take notes on nonverbal cues, important for credibility determinations

- Post-interview

Location, Location, Location!

The location of the interview can influence the results you get as well as the way the investigation proceeds.

Thoughtful consideration should be given to the interview room. Should it be in an office, which may create a chilling effect on the desire for candid discussion?

Maybe you should choose a neutral location where the witness feels more comfortable talking about the events that occurred.

*Who is in the room also matters. Additional persons may serve to encourage disclosure or stifle the interview.

Witness Interviews

Witness Rights and Obligations

VA employees are required to cooperate and testify truthfully. *See* 38 C.F.R. 0.735-12(b)

Employees are protected against retaliation for providing testimony.

Witnesses have the right to be notified in advance of the general nature of the inquiry.

Employee's are not required to provide self-incriminating testimony that could be used to prove criminal charges.

Testimony can be compelled by obtaining and issuing a "Kalkines Warning" (consult with Personnel Law Group)

Witness Interviews

Witness Rights and Obligations

Right to Representation:

Non-CBU employees are “allowed” to have a representation but it is not an entitlement.

CBU employees are entitled to have a union representative.

Must be provided notice and a reasonable amount of time to obtain a representative.

Union representative can play an active role in advising/counseling employee.

During the investigation, witnesses do not have the right to obtain documents in advance or cross-examine other witnesses.

Witness Interviews

Non-Employee Witnesses

Patients

- Obtain medical clearance.

- Must agree to appear and to take an oath.

Family Members

- Must agree to appear and to take an oath.

Contractors

- Must agree to appear and to take an oath.

Building Rapport

Challenging, but equally important!

Have a list of topics that you want to discuss with the witness.

Bring any supporting documentation upon which you want the witness to comment. The information gathered may be used later to confront the subject.

Allaying the person's concerns
dispel misconceptions on how an interview might be conducted
find common ground and be matter-of-fact with your questions

These tactics can all contribute to a more productive interview

Building Rapport

Establishing a rapport may also help your subject to view you as someone they need and can trust to help them negotiate the unfamiliar world of being a witness in a whistleblower investigation.

Building Rapport

For both witnesses and suspects, in-person interviews are much more productive than telephone interviews since so much of communication is non-verbal.

Experienced investigators are very attuned to the physical cues of interview subjects, especially when a question is uncomfortable or the subject is being deceptive.

Capitalize on the cues you receive during the interview by asking more open-ended questions.

Cognitive Interviews

Your job, as an investigator is to maximize memory retrieval, during the interview, from a detailed level more that from a general level.

Cognitive interviews focus on the details. In order to assist the witness to remember as much about the event as possible.

Cognitive Interviews

In a study done by Fisher, Geiselman, and Amador, the recommendation is made to interviewer to encourage the witness to revisit their state of mind at the time of the event.

The witness should be encouraged to think about external factors (e.g., weather or the smell of smoke, sound of whispers), emotional factors (e.g., feelings of fear or angst), or cognitive factors (e.g., relevant thoughts that were present), which may cause a more accurate memory of the events in question.

Cognitive Interviews

The usefulness of cognitive interviews depends upon the presence of eyewitnesses at the scene of a crime. If there are no eyewitnesses or bystanders present during a crime, the use in performing a cognitive interview becomes limited to non-existent.

Cognitive Interviews

Although cognitive interviews aim to increase the amount of information reported from an eyewitness, implementing this method of memory-enhancement does not necessarily guarantee accurate information. During the interview process it is not uncommon for an interviewee to succumb to a social desirability bias. This means that the witness alters their story or response in a way that they feel makes their answer more acceptable in the eyes of the interviewer as well as society.^[18]

Witness Interviews

Assessing Credibility of a Witness

Capacity and opportunity to observe and recall the event accurately.

Inherent probability.

Consistency with other statements and evidence.

Bias.

Character traits related to truthfulness.

Demeanor.

Witness Interview

Hillen v. Department of the
Army

Witness Interview

The Seven *Hillen* Factors

- (1) the witness' opportunity and capacity to observe the event or act in question;
- (2) the witness' character;
- (3) any prior inconsistent statement by the witness;
- (4) a witness' bias, or lack of bias;
- (5) the contradiction of the witness' version of events by other evidence or its consistency with other evidence;
- (6) the inherent improbability of the witness' version of events; and
- (7) the witness' demeanor.

Rights Warnings

To Give or Not to Give...That is the Question!

Witness Interviews

Types of Questions:

Open ended: Please tell us what you saw.

Probing questions: We heard from another witness that...do you see it that way? What is the common practice?

Yes/No Questions: Did you see him hit the patient?

Fishing: Is there anything else you can tell us? Is there anyone else who has info?

Sequence of Questions: Tell the story 3 times

Open ended question- let the witness tell their story

Probing- take the witness through the story again to clarify events, timeline, inconsistencies

Test the story against prior information, looking for confirming and disconfirming information

Witness Interviews

Follow-up questions.

- Pin down the witness.

- Correct contradictory statements within same interview.

- Interviewee's words matter. Follow-up to clarify vague statements.

Do not put words into the interviewee's mouth.

The importance of the record.

- Will be used if an action is taken based on the evidence.

Exercise

TAKE AWAY

Building a good rapport and creating a comfortable environment in which the witness may feel secure while providing his or her testimony , will make for a more thorough investigation.

Questions?



Handling High Profile Cases

REFER, REFER, REFER!

Unless you are the subject matter expert designated to speak for the agency, REFER!

Coordinate with your public affairs office, or legislative liaison, to ensure that the appropriate individuals, with the authorization to speak on behalf of the agency are fielding the questions and communicating the approved message. Your responsibility is to conduct the investigation, within the investigatory scope.

Writing the Report

Step One: Analyze the Evidence

Step Two: State the Facts

Step Three: Draw Conclusions

Step Four: Write the Report

Understand and analyze the evidence; find facts established by the evidence, and draw conclusions by fitting the facts together into a bigger picture

WRITING THE REPORT

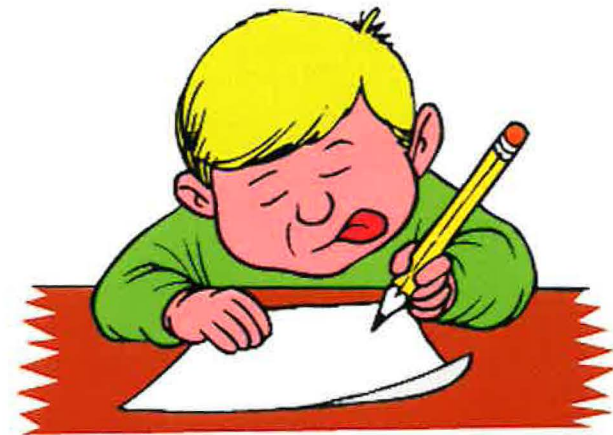
ORGANIZATION

STATEMENT OF THE FACTS (CHRONOLOGY)

MAKING FINDINGS (REACHING CONCLUSIONS)

DRAFTING FINDINGS

WHO MAKES THE RECOMMENDATIONS?



Writing the Report

Compile and Review all of Your Evidence

Organize your evidence relevant to the issues.

Have you addressed all the sub-issues?

Have you answered all the questions?

Determine what your witnesses have told you and what they haven't.

Determine what your documents tell you and what they don't.

Are all your documents authenticated?

When faced with conflicting testimony, make credibility determinations to properly assess and determine weight

Writing the Report

Identify the gaps in in your evidence, if any.

Identify the conflicts. Can the conflicts be resolved?

When faced with conflicting testimony make credibility determinations to assess its weight.

Articulate why you give more weight to one person's testimony over another; discuss the credibility factors and how they were considered.

Don't ignore inconsistencies; confront them head-on.

Two versions doesn't always mean one is lying:

Can they be reconciled?

Is there an explanation for the different versions?

Writing the Report

Make Findings of Fact

Start with the easy facts that can be established by the evidence.

Cite evidence that supports each statement of fact.

Show your work, every statement should have a citation!

Citations are EXTREMELY important, every part of your sentence must have a cite to the evidence.

Example: Mechanic Mike Motorhouse drove the van on March 15th and logged 14 miles in the log book (Ex. 4 (Testimony of MM), p. 6; Ex. 6 (Testimony of employee Speedy), p. 12; Ex. 7 (Vehicle Log), p. 14).

Writing the Report

Move on to the harder facts with conflicting evidence.

Address why you believe the statement of fact to be true (by the appropriate burden) in light of the conflicting or contradictory evidence.

Don't ignore the conflict- address it.

Discuss your credibility determination.

Example: Fact #2: The Chevy Van was driven approximately 112 miles on March 15th. Although the vehicle usage log for the 15th indicates the van was only driven 14 miles by MM (Ex. C, pg.3; Ex. H, pg. 6), the board believes it to be a fact that the van was driven for 112 miles on the 15th. The Board established this fact by giving more weight to the Inspection report completed independently by N. Speedy on the afternoon of the 14th as well as the afternoon of the 15th (Ex. E, page 3) which showed 112 miles driven on the 15th as well as the testimony of

Writing the Report

Draw Conclusions

If facts support a conclusion by the applicable burden of proof, state the conclusion in your report.

- Be sure to articulate (cite) which facts support each conclusion.

- You must address inconsistencies in facts when drawing a conclusion.

- Discuss why you made a conclusion in light of contradictory evidence.

Rarely do you have “no conclusion” on a particular matter.

- You cannot state “no conclusion could be made.”

- You either conclude the allegations are substantiated or they are not.

- You may make other related conclusions.

Writing the Report

When making your findings, connect the dots. Show which facts support your findings.

Example: Conclusion A: *The Government van was*_____. This conclusion is supported by facts # 1, 3, 4 and 6 discussed above. There is no evidence or findings of facts that directly contradict this conclusion.

Example: Conclusion B: *Mike Motorhouse did*_____. This conclusion is based primarily on facts #2, #3, #5, and #7 above. Although fact #8 appears to conflict with this conclusion, that particular fact was established based primarily on the testimony of witnesses who did not have first hand knowledge of the incident and whom had difficulty recalling details. In contrast, the evidence supporting facts #2, #3, and #5 are based on testimony of first hand knowledge and corroborated by documentary evidence.

Writing the Report

Your report should include the following :

Preliminary Statement

Findings of Fact (cited to evidence)

Conclusions (cited to facts)

Other issues (if applicable)

Recommendations (if requested)

List of Exhibits

Writing the Report

Other issues: When important concerns arise that are not related to the charges during an investigation, identify them. This includes things such as:

- Possible criminal activity (stop and share immediately)
- Process or system problems
- Ethical violations
- Compliance and business integrity risks
- Additional allegations

Recommendations must be related to the charge.

Recommendations must be supported by findings and conclusions.

WRITING THE REPORT

TAKE AWAY POINTS:

1. BE CLEAR, CONCISE AND SEQUENTIAL
2. YOUR FACTS MUST SUPPORT YOUR CONCLUSIONS.



Questions?



